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League for Social Reconstruction
Brief submitted to the Royal
Commission on Dominion-Provin-
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BRIEF

SUBMITTED TO THE

ROYAL COMMISSION ON DOMINION-PROVINCIAL RELATIONS

BY THE

LEAGUE FOR SOCIAL RECONSTRUCTION

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BRIEF

SUBMITTED BY THE

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to the

ROYAL COMMISSION ON DOMINION PROVINCIAL RELATIONS

The Need for a National Purpose

1. This brief will not attempt to cover all the problems included in the terms of reference of the Commission. It will be confined to the consideration of certain general ideas and principles which the League for Social Reconstruction believes to require emphasis at the present time. Before any reforms can be proposed in Dominion-provincial relations there must be agreement as to the purpose which it is desired to achieve through their adoption. The validity of a recommendation can only be tested by reference to the object in view; every suggested change, whether in the incidence of taxation, the burden of debt, or the distribution of powers under the B. N. A. Act, implies a conscious selection of the road along which the Dominion is expected to travel in the future, and a willingness to choose between competing alternatives. To use a current term, there is an "ideological" implication in the work of the Commission. The League for Social Reconstruction wishes to discuss the nature of the social and political aims appropriate to Canada at the present

time, and to recommend certain reforms and constitutional changes which will enable these aims to be more fully realized than is possible under existing conditions.

2. The last occasion on which Canadians discussed their social philosophy preparatory to constitutional changes was in the troubled years preceding the adoption of the British North America Act of 1867. The records of those discussions, as well as the text of the Act itself, reveal very clearly the purposes for which the larger political organization, the present Dominion of Canada, was created, and the principles on which it was expected to operate. It is worth while recalling those purposes and principles today. In many respects they will be found to be more suited to the needs of the present than is currently thought to be the case by people who have not read the original documents.

The Concept of National Purpose in 1867

3. The national purposes agreed upon in 1867 may be described as follows:

i. The union of British North America in a single federal state under the Crown of Great Britain.

This object was the raison d'etre of Confederation. The preamble to the B. N. A. Act declares that "The Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into one Dominion under the

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Crown of the United Kingdom of Great Britain and Ireland." Section 4 of the Act states that on the day the Act is proclaimed the provinces "shall form and be One Dominion under the name of Canada". Unity replaced the former provincial sovereignties, which were thenceforth restricted to a portion only of their original field. "A new nationality" (the phrase was used in the Speech from the Throne in the Parliament of Canada in 1865) and a new country was being created, to weld together the parochial loyalties of the little colonies into a larger whole. "The sentiment of nationality will soon take root among us", prophesied the Honourable John Rose.

ii. The preservation of the parliamentary system of government after the model of the British constitution.

The preamble to the B. N. A. Act declares the intention to provide "a constitution similar in Principle to that of the United Kingdom", Resolutions 3 and 4 of Quebec speak of following "the model of the British constitution", and of administering the Executive Authority according to its "well understood principles". The whole B. N. A. Act is impregnated with the ideas of representative and responsible government.

iii. The protection of minority rights.

This object, ever present to the Fathers of Confederation, was achieved by a number of provisions in the B.N.A.Act of which the principal ones are the sections relating to the

use of the French language, (133), the protection of denominational schools (93), and the guaranteed representation from Quebec in the Dominion Senate and House of Commons.

iv. The creation of a national government fully empowered to deal with essentially national problems and possessing a residue of power over matters of common concern to all the provinces.

This purpose of the Fathers of Confederation has been lost sight of in recent times. Yet the concept of the national interest as something overriding local or sectional interests was very clear to the framers of the original Act. They had before them the spectacle of a federal state (the United States of America) driven to civil war because of an over-insistence on the rights of the component states, and they were determined that no such fate should befall the British North American Colonies through similar constitutional mistakes. During the Quebec Conference the Honourable Mr. Coles of Prince Edward Island moved

> "that the Local Legislatures shall have power to make all laws not given by this Conference to the General Legislature expressly."

This motion was unanimously negatived[1]. Everybody was agreed that the federal Government was not to be restricted to specific or enumerated powers, as is the Congress of the

[1]Pope: Confederation Documents, p.27.

United States. Sir John Macdonald stated the matter with great explicitness in the Debates on the Quebec Resolutions. He said:

> "Ever since the (American) Union was formed the difficulty of what is called "State Rights" has existed, and this has had much to do in bringing on the present unhappy war in the United States. They commenced, in fact, at the wrong end. They declared by their constitution that each state was a sovereignty in itself, and that all the powers incident to a sovereignty belonged to each state, except those powers which, by the Constitution, were conferred upon the General Government and Congress. Here we have adopted a different system. We have strengthened the General Government. We have given the General Legislature all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incident to sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon the local governments and local legislatures, shall be conferred upon the General Government and Legislature. - We have thus avoided that great source of weakness which has been the cause of the disruption of the United States."[1]

Later in the debate he came back to the point. Speaking of the Dominion residuary clause (Quebec Resolutions No. 29. para. 37) he said:

> "This is precisely the provision that is wanting in the constitution of the United States. It is here that we find the weakness in the American system -- the point where the American Constitution breaks down. (Hear,Hear.) It is in itself a wise and necessary provision. We thereby strengthen the Central Parliament, and make the Confederation one people and one government, instead of five peoples and five governments, with merely a point of authority connecting us to a limited and insufficient extent."[2]

This interpretation of the purpose of Confederation comes, it is true, from the man who would have preferred a legislative union. Nevertheless he is here speaking of what is stated expressly in the second and 29th of the Quebec Resolutions. Nonne, whether

[1] Debates on Confederation, p. 33.

[2] Ibid., p. 41.

a supporter or opponent of Confederation, took a different view. Sir George Cartier pointed out that

> "Questions of commerce, of international communication and all matters of general interest, would be discussed and determined in the General Legislature. ... Under the Federation system granting to the control of the General Government those large questions of general interest in which the differences of race or religion had no place, it could not be pretended that the rights of either race or religion could be invaded at all."[1]

The Honourable George Brown said:

> "For all dealings with the Imperial Government and foreign countries we have clothed the General Government with the most ample powers. And finally, all matters of trade and commerce, banking and currency, and all questions common to the whole people, we have vested fully and unrestrictedly in the General Government."[2]

D'Arcy McGee, after pointing out that in former Confederacies there was one fatal defect, "the weakness of the central authority", commends the principle of federalism as the protector of liberty because

> "local affairs are left to be dealt with by local bodies and cannot be interfered with by those who have no local interest in them, while matters of a general character are left exclusively to a general government."[3]

The Honourable H. L. Langevin said

> "The Central or Federal Parliament will have the control of all measures of a general character, as provided by the Quebec Conference; but all matters of local interest, all that relates to the affairs and rights of the different sections of the Confederacy, will be reserved for the control of the local parliaments."[4]

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[1] Debates on Confederation, pp. 55, 60.

[2] Ibid., p. 108.

[3] Ibid., pp. 144-145.

[4] Ibid., pp. 367-8.

Two opponents of Confederation spoke in the same vein. The Honourable L. A. Olivier protested that

> "The powers of the Federal Government will be in reality unlimited. The fact of the enumeration of these thirty-seven heads does not in the least restrain the power of the Federal Government from legislating on everything. The exceptions are few."[1]

And Honourable A. A. Dorion declared

> "The Confederation I advocated was a real Confederation, giving the largest powers to the local governments, and merely a delegated authority to the General Government - in that respect differing in toto from the one now proposed, which gives all the powers to the Central Government and reserves for the local governments the smallest possible amount of freedom of action."[2]

If further emphasis were needed, it is to be found in the remarks of Lord Carnarvon and Mr. Adderley in the Imperial Parliament. A portion of the former's speech was incorporated by Lord Sankey in the Aeronautics case, during the brief period from 1932-35 when the Privy Council seemed about to return to the original intent of the B. N. A. Act. Lord Carnarvon said:[3]

> "The real object we have in view is to give the central government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions that are of common import to all the Provinces; and at the same time to retain for each province so ample a measure of municipal liberty and self-government as will allow and indeed compel them to exercise these local powers which they can exercise with great advantage to the community. ... In closing my observations upon the distribution of powers, I ought to point out that just as the authority of the Central Parliament will prevail whenever it may come into conflict with the Local Legislatures, so the

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[1] Debates on Confederation, p. 176.
[2] Ibid., p. 250. Other citations might be given: see e.g. Hon. E.P.Taché, (at p. 9), Mr. Galt, (at p. 70), Mr. Scoble, (at p. 911.).
[3] Hansard, Vol. 185, Col. 563-566.

residue of legislation, if any, unprovided for in the specific classification which I have explained, will belong to the central body. It will be seen, under the 91st clause, that the classification is not intended 'to restrict the generality' of the powers previously given to the central parliament, and that those powers extend to all laws made 'for the peace, order, and good government' of the Confederation, terms which, according to all precedents, will, I understand, carry with them an ample measure of legislative authority."

The best constitutional students and authorities in Canada have always accepted this concept of Confederation. Clement[1], Lefroy[2], Kennedy[3], Bourinot[4], H.A.Smith[5], and others will be found in support of the view that matters of national concern are - or should be - within federal jurisdiction by the terms of the 1867 agreement. When the B. N. A. Act is read in the light of that agreement it assumes a character very different from that given it by the now prevailing judicial interpretation. Canada was to be a Federation, but the central government was to keep a firm hand upon the local authorities to see that the national interests were protected. The Fathers of Confederation tried to develop the sentiment of unity by placing the national government in charge of what were at that time the most important and vital functions, and giving it a supervisory

[1] Canadian Constitution, 3rd ed. pp.448, 473.

[2] Canada's Federal System, p. 133.

[3] The Constitution of Canada, p. 438.

[4] Manual of the Constitutional History of Canada, (1901) p. 80.

[5] Canadian Bar Review, Vol. IV, p. 438. See also address by C. H. Cahan, K.C., before Toronto Canadian Club, Sept. 15, 1937.

power over the provinces into the bargain. Hence the Dominion was given control over the regulation of trade and commerce, over banking and currency, over shipping and navigation, over interprovincial railroads, ferries and telegraphs (highways were not mentioned because they were then of local importance only), over patents and copyright, over the criminal law, over national defence and over the implementing of treaties affecting Canada; hence too the Dominion appoints Senators and judges; appoints, instructs and dismisses lieutenant-governors; and may veto any piece of provincial legislation. So too the Dominion Parliament may lift any public "work" out of provincial jurisdiction by a mere declaration that it is for the general advantage of Canada. The concept of unity was uppermost in the framing of the B.N.A. Act; federalism was admitted by way of necessity and only in a restricted form.

v. A progressive development toward the legislative unity of Canada in matters of property and civil rights, in all the provinces except Quebec.

This is another object of Confederation which has been forgotten. The B.N.A.Act originally gave the Dominion jurisdiction over matters of national concern, but left the provinces with local control over property and civil rights. Variations in provincial laws were thus anticipated. The Fathers of Confederation looked forward, however, to a diminution of even these local differences and to a progressive increase in the

power of the federal parliament over such matters. Section 94 of the B.N.A. Act contains a provision which is both ingenious and farsighted. It provides that :

> "Notwithstanding anything in this Act, the Parliament of Canada may make provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof."

Here is, in effect, a method of increasing the existing powers of the Dominion Parliament without the necessity of an amendment to the Act; it is a method by which the provinces (except Quebec, whose basic law is French in origin) may actually surrender their jurisdiction by adopting the Dominion Act prepared for that purpose. A single vote in a Provincial Legislature would be sufficient, under this section, to subtract for the future from provincial powers whatever was contained in the Dominion Act, and to hand over that much of their former jurisdiction. Sir John Macdonald set great store by this provision, and even saw it extending into the municipal field; "it was understood", he said, "so far as we could influence the future, that the first Act of the Confederate Government should be to procure an assimilation of the statutory law of all those provinces, which has, as its root and foundation, the common law of England."(1) This hope

(1) Debates on Confederation, p. 41. Section 94 is referred to also at p. 462-3 by Mr. Cameron.

was frustrated by the turn of events, but it is indicative of the national thinking animating the framers of the constitution.(1) The creation of the Canadian Supreme Court in 1875 and the denial of the Appeal as of right from its decisions to the Privy Council, was another step toward the attempted unification of Canadian law. We know that the phrase "Property and Civil Rights" had a very much narrower meaning formerly than it has today;(2) it is therefore more necessary today to overcome the differences in provincial laws.

4. A federal state with an especially strong central government, recognizing and protecting minority rights yet progressively moving toward greater unity -- such was the Dominion of Canada as conceived by the Canadian statesmen of 1867. The League for Social Reconstruction submits that their ideas are sound even under the conditions of the present. Confusion and uncertainty now exist in Dominion-Provincial relations, but they are not due to weaknesses in the constitutional principles originally adopted.

Obstacles to Progress

5. Since 1867 a number of developments have conspired to hamper and obstruct the achievement of the purposes of Confed-

(1) A beginning was made in 1869 to unify provincial laws. The Hon. J.H.Gray was appointed a Commissioner to investigate the subject and he presented a report Feb. 9th 1871. (Sessional Papers, 1871, No. 16. Cf. Journals of the House of Commons, 1869, pp.43, 186, 268; 1870, pp. 29, 108; 1871, p. 30). For some reason the whole matter was dropped.

(2) See the history of the phrase as traced by C.H.Cahan, K.C., in the speech referred to above.

eration. Amongst these may be noted

4. The retention of the appeal to the Privy Council.

This has been largely responsible for the substitution of a theoretical, inefficient and loose English concept of federalism for the practical, balanced and unified Canadian concept so evident in the documents quoted above. This statement has been commented on frequently by Canadian constitutionalists and scarcely needs elaboration here. Lest some people still believe, however, that the Judicial Committee performs a purely "judicial" function, and merely "interprets the statute", we would quote a passage from the writings of the late Lord Haldane, possibly the most dominating influence in Canadian constitutional history after Sir John Macdonald. It comes from an article written in 1899 as a tribute to the work of Lord Watson, who just died. Lord Haldane (then Mr. Haldane) said of the deceased jurist:(1)

> "He was an Imperial judge of the very first order. The function of such a judge, sitting in the supreme tribunal of the Empire, is to do more than decide what abstract and familiar legal conceptions should be applied to particular cases. His function is to be a statesman as well as a jurist, to fill in the gaps which Parliament has deliberately left in the skeleton constitutions and laws that it has provided for the British Colonies.....Lord Carnarvon's Confederation Act of 1867, which had given separate legislatures and executives to the Provinces, had by no means completely defined the relations of these legislatures and their Lieutenant-Governors to the Parliament and Govenor-General of the Dominion. Two views were being contended for. The one was that, excepting in such cases as were specially provided for, a general principle ought to be recognized which would tend to make the Government at Ottawa paramount, and the Governments of the Provinces subordinate. The other was that of federalism through and through, in executive as well as legislative concerns, whenever the contrary had not been expressly said by the Imperial Parliament. The Provincial Govern-

(1) The Juridical Review, Vol. 11, 1899, pp. 279-280. Italics ours.

> ments naturally pressed this latter view very strongly. The Supreme Court of Canada, however, which had been established under the Confederation Act, and was originally intended by all parties to be the practically final Court of appeal for Canada, took the other view...Lord Watson made the business of laying down the new law that was necessary his own. He completely altered the tendency of the decisions of the Supreme Court....In a series of masterly judgments he expounded and established the real constitution of Canada."

Little comment need be made on this passage, except to point out that Lord Haldane was even more willing to "lay down new law". The conflict between Canadian intentions and Privy Council interpretations is likely to continue so long as the appeal continues. It is asking too much of a court which professes to be staffed with statesmen as well as jurists, to expect it to reflect in its decisions the spirit and aspirations of a people whom it neither lives amongst nor understands. If this commission recommends amendments to the B.N.A. Act, these in their turn may be frustrated in their operation by subsequent interpretations.

As a result of seventy years of judicial interpretation the Dominion Parliament finds itself shorn of its general residuary powers, except on occasions of national calamity greater than the world crisis of 1929-35, shorn of much of its power to regulate trade and commerce, shorn of a great part of its power to implement treaties, and almost totally incapable of providing for the masses of the Canadian population that protection against the national evils of unemployment, fluctuating wage and price levels, and social insecurity which is being increasingly demanded today. People in need have been forced to look to the provinces for help: the provinces in their turn are incapable of giving it in adequate measure.

ii. The decline in authority of the central government consequent upon the reduction of its legal powers has been followed by a great revival of sectional feeling in Canada. There is no national purpose being fulfilled by the federal authorities which can evoke an overriding and unifying patriotism. It has been shown that a belief in Canada, the nation, was flowing strongly in the minds of the founders of this Dominion. That spirit weakened toward the end of the 19th century; provincial rights sentiment was quite strong in the '80's' and '90's'. The abortive interprovincial conference of 1887 declared that "the preservation of provincial autonomy is essential to the future well-being of Canada", and that "if such autonomy is to be maintained, it has become apparent that the constitutional act must be revised and amended"; amongst the proposed amendments were the abolition of the Dominion power of disallowance of provincial laws and of appointment of Senators. With the turn of the century a new prosperity produced a new nationalism. Sir Wilfrid Laurier, who symbolized completely the idea of the cooperation of the two dominant races in the building of the single national state, set himself at the head of a great movement for filling up the West. Provincial loyalties were once more pushed into the shadow. The Great War coming at the end of this movement of westward expansion still further strengthened national feeling, at least among English Canadians, because once again the national government was doing the really important things, the things that vitally mattered in the eyes of every citizen.

Since the War another period of provincialism has been

evident. The feeling of unity fostered by the war effort continued for some time; it was stimulated by the development of Dominion status in the international field and by the healing of the more extreme racial feelings left as a consequence of the Conscription Act and its enforcement. But with the ending of the war controls the government at Ottawa reverted to a position of comparative inactivity in domestic affairs. Some initiative was shown by the adoption of the Board of Commerce Act, the signing of the Washington Convention on the 8-hour day, the opening of employment offices and the assisting of technical education, but the movement soon petered out. The business of developing Canada was left to the leaders of finance and industry; the principal directive of Parliament was the provision of tariff protection. The tariff, instead of unifying the country, produced legitimate sectional complaints, for it was not designed to treat and did not treat all sections of the country with equal fairness and consideration. When the crash came in 1929 and the false sense of security was destroyed, the divisive influences in the Dominion came promptly to the fore, and have until now frustrated the organization even of efficient unemployment relief services. Today, for considerable sections of the Canadian people, Ottawa has become almost the seat of a foreign power -- a Geneva amongst a group of sovereign states.(1)

(1) For example, the Hon. A.P.Paterson is reported in the press of Dec. 28, 1936 to have said "In New Brunswick George VI was proclaimed King of Great Britian and Ireland and of this province dependent on and belonging to the said Kingdom...It is our intention to teach the history of this province as a province of the United Kingdom."

[illegible]

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(1) [illegible]

iii. All the while that Canadian national sentiment has been meeting these obstacles, the Canadian economy has been moving steadily in the direction of monopoly control. Outside of agriculture the greater part of our economic processes is directed from Toronto and Montreal, and large sections of the agricultural community are dependent on monopoly or semi-monopoly interests for the goods they must buy and the prices at which they must sell to domestic markets. The nature and extent of the growth of monopoly in Canada has been described in a number of publications, of which we may mention the Price Spreads Report of 1935 and certain sections in "Social Planning for Canada", published by the League for Social Reconstruction in the same year. The effects of this trend from the constitutional point of view are most serious. It means there have grown up in Canada new centres of power and authority, not part of the formal constitutional structure yet capable of shaping the destinies of the country in a manner that parallels, if it does not indeed exceed, the power of government. The price and production policy of great industrial monopolies vitally affects employment and unemployment; the mass buying power of a few large processors of agricultural produce, the interest and loan policy of a few banks or financial houses can make the difference between success and failure to farmers all over the country. Over a period of time economic policies decided upon by boards of directors on which there is no consumer, farmer, or labour representation, determine the direction in which the economy grows.

Monopoly means, in addition to great power that challenges government, a maldistribution of wealth. In the year 1937, when

public relief was still being given to close on a million Canadians and the real value of relief payments had been reduced by rising prices, when the worst drought in the history of Canada had struck the prairie provinces, and wage rates in many industries were still very low, Canadian corporations were able to pay the biggest dividends in the history of the Dominion.(1) Through this corporate control over the sources of wealth in Canada a disproportionate share of the total national income can be and is appropriated to thepayment of profit to capital above what is paid as wages for labour or as income to primary producers in the form of prices on their products. There is a widespread impression that the average Canadian is comforatbly off and a property owner. But all the analyses of the distribution of income and property in Canada, whether they be of bank deposits, of insurance contracts, of income tax payments, of the ownership of homes in cities, of the rate of growth of tenancy amongst farmers, combine to show that a few Canadians are very well off indeed and control astonishly large amounts of property, and the vast majority of the people are poorly off and own a very small amount of debt-free property. The Dominion is well along the road that leads to industrial feudalism, to class conflicts and to undemocratic social standards. It is the duty of governments in Canada to remedy these evils and to check these trends. The only government capable of attempting this vitally important task is

(1) Dividend payments in 1930, the previous peak year, totalled $284,641,548; in 1937 they totalled $328,807,014. (Financial Post Dec. 11, 1937.) Bond interest was $298,602,253 in 1930 and $423,692,015 in 1937.

the federal government. There is a vested interest in this concentrated wealth which only a national government is strong enough to control.

6. After two generations of national life under the Confederation agreement it can be said that three of the original five principal objects have been achieved; one is alive but none too secure; while two have been frustrated, The union of Canada under the Crown of Great Britain remains, and the rights of minorities are accepted as a basic part of the constitution, even though the extent of those rights gives rise to frequent debate. Those two objects have been successful. The preservation of parliamentary institutions has also been achieved, but democracy as a way of life has deteriorated in many respects in Canada. We may repeat the reasons for this: (1) the increasing power of small minorities in control of money and the press, who are able to influence parties unduly and to swing elections, (2) the increasing maldistribution of income and property, which is making the accident of birth more and more important in the life of the individual Canadian, (3) the great disparity of bargaining power between capital and labour, due to the more rapid increase of centralized control on the side of capital than on the side of labour.

Of the remaining two purposes which the Fathers of Confederation hoped to achieve, one, a strong central government with effective residuary power, has been largely frustrated, and the other, the progressive unification of Canadian law in the common-law provinces, has been totally unfulfilled.

The League for Social Reconstruction submits again that all these objectives are still sound for the Canada of today and for the future, and urges that their further realization be used as criteria to assist in the selection of the recommendations of the Commission.

New National Purposes

7. It is not sufficient, however, to go back to 1867 for such criteria, important though we believe the historical approach to be. A great increase in the functions of government has taken place, and new purposes of government have come to be accepted as legitimate. These new purposes must find constitutional expression just as did the old. This cannot be efficiently provided for without constitutional changes.

What are the new objectives which Canadians as a whole wish to achieve through governmental action? We believe there are two of outstanding importance.

I. The first is the provision of a basic minimum of social security for every citizen. This is recognized as a primary duty of the state in nearly every highly industrialized country today. No person should be compelled by economic necessity to work or to live below a standard fixed by public policy. Canada for a number of reasons has been slower to accept this responsibility than have Great Britain, New Zealand, or Australia, yet we believe that public opinion is alive to the need and is ahead of existing social legislation on the subject. We maintain

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further that such a function as this can only be adequately fulfilled by the federal government. It is not only that some provinces are financially incapable of providing effective social security. Unemployment insurance, minimum wages, maximum hours, and similar forms of protection are inextricably related to international and interprovincial trade, central bank policies, interest rates, tariff controls and other functions now in Dominion hands. They cannot be placed in separate provincial hands without the certainty of just the sort of confusion, overlapping and inefficiency that actually exists to a great degree in Canada now. It may be stated as a general proposition that, in a free trade area such as Canada is[1], the only government capable of establishing and maintaining a basic minimum security for every section of the country is the government which has the dominant economic controls within its power. This supreme economic authority in Canada, despite the Privy Council, is still the Dominion government. Whoever controls economic policy must control social legislation. ✓ WB

We would therefore advocate the assumption by the Dominion government, through the necessary constitutional changes, of responsibility for providing a permanent system of social security in Canada. There is a national interest of vast importance here

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[1]The existing interferences with interprovincial free trade are not yet sufficiently important to destroy the value of this generalization.

affecting the body politic of the Dominion. The generation of 1867, had they been faced with the choice, would not have hesitated to ascribe this duty to the "general government"[1]; we of this generation should think in a like fashion. A Department of National Welfare[2] should be created at Ottawa, embracing all the duties of the existing departments of Labour, Pensions, and National Health, and administering the federal laws relating to unemployment insurance and relief, old age and other pensions, health insurance, wages and hours, and holidays with pay. Crop insurance for the farming population might well be included; it is a hazard, like that of unemployment, the cost of insuring which ought to be spread over the whole economy.

The creation of a National Welfare Code embracing these provisions would immediately achieve three objects which the Commission must have in view. The first is the alleviation of the financial burdens now bearing so heavily and so unevenly on the provinces and municipalities, which has been the subject of so many representations before this Commission. The second is the equalization of the burdens and the benefits of communal life in

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[1]As a matter of fact, a government which included five Fathers of Confederation introduced three Dominion Factory bills, in 1882-4, and Sir Alexander Campbell, Minister of Justice, was confident they were within Dominion jurisdiction. (Senate Debates 1882, pp. 367-370.)

[2]It is significant that the Quebec Resolutions talked about "Peace, Welfare and Good Government": the word "Order" was substituted for "Welfare" in the final draft of the B.N.A. Act.

Canada and the distribution of the national income on more equitable and democratic conditions. At present, for example, a drought may drastically reduce the living standards of the West at the same time as an artificially high price for gold or base metals raised the income of the central provinces to unexpected heights. Both the drought and the minerals are of national concern. The West did not (save in partial and remote fashion) bring on its drought, and the central provinces certainly did not plant the minerals in the ground. There is a national fairness in balancing these accidents one against the other, which could be done in a reasonable degree through the system of national social services. The third object which would be achieved by a National Welfare Code, and the most important in our view, would be the greater unification of Canada. If the citizens learned to look to Ottawa for these vitally important protections, if they were taught to realize that the natural wealth of this country is for the benefit of all and not just of the section in which it is first exploited, they would feel a loyalty and patriotism toward the Dominion authorities which would overcome much of the present provincialism. The Federal government has been altogether too willing in the past to shirk its responsibilities of leadership and to refrain from making use even of the powers which it undoubtedly possesses. The slightest hint of provincial objection has often been enough to prevent any action at all.

II. The second of the new functions of the state today (see paragraph 7 above) is less generally accepted, but in our opinion is of the greatest importance. It is the function of introducing the controls and long range plans necessary to maintain economic stability, to eliminate unfair competition and waste, and to see that natural resources are developed in the best and most efficient manner. A National Welfare Code of itself is not enough. The elimination of poverty and insecurity altogether by long-range economic planning is the basic task; prevention is here many times better(and far cheaper) than cure. Already in Canada the machinery for introducing needed controls is being built. The Bank of Canada, the Tariff Board, the Wheat Board, the Trade and Industry Commission, the Board of Railway Commissioners, and similar regulatory bodies are steps in this direction. But we are only at the beginning of this movement, which is destined to carry us further and further in the direction of state intervention in economic affairs no matter what government holds office at Ottawa. If such intervention is to be efficient, and is to achieve its purpose, it will have to be on a national scale. It will therefore have to be a function of the Dominion Parliament.

Some constitutional changes are necessary to make this possible. The B.N.A. Act expressly gives the Federal government the "exclusive" power to regulate trade and commerce, banking, currency, interest, and interprovincial communications, jurisdic-

tion over customs and excise, and a paramount power over agriculture and immigration, thus indicating very clearly where the Fathers of Confederation intended the principal economic control to be. Judicial interpretation in this sphere also, however, has amended the constitution by narrowing the Dominion powers and widening provincial powers. The regulation of trade and commerce within a province is now held to be part of the provincial power over property and civil rights. The provincial power of "direct taxation" has been extended so as to include sales taxes and taxes on consumption which have a very definite regulatory effect upon trade whatever their purpose may be. A Dominion Marketing Act, passed in the midst of a disastrous collapse of agricultural prices and supported by special co-operating legislation in every province, has been declared ultra vires; so too has a Dominion Act dealing with industrial disputes though the greater part of organized labour in Canada is affiliated to national or international unions. A constitutional authority has said that "It is, I think, correct to say that in no single case has the Privy Council or Supreme Court upheld Dominion legislation on the sole ground that it was within its authority to legislate respecting trade and commerce."[1] Today the general Dominion power over internal trade practices seems to be restricted to a criminal jurisdiction. Theoretically a power to control interprovincial trade exists, but

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[1]Brooke Claxton, in Social Reform and the Constitution, C.J.E.P.S. Aug. 1935, p. 420.

is so vaguely defined as to be unserviceable. A forward-looking programme of economic stabilization would rest insecurely on this constitutional base. We therefore recommend that amendments be introduced which will restore to the Dominion its power to make general regulations for trade and commerce, as well as power to enact marketing legislation for internal as well as external trade.

8. While a consideration of measures to stabilize the economy may be outside the terms of references of this Commission, we would nevertheless urge that the present financial and constitutional difficulties in Canada are so intimately bound up with economic problems as to be inseparable from them. The "conflict" between east and west, of which so much is heard, is largely the clash of interest between a highly protected industrial region and an unprotected agricultural region. The per capita subsidies payments established by the B.N.A. Act and amendments treat all the capita as equally deserving of Dominion support, whether they be in the protected industries of the east or the unprotected wheat fields of the west. Actually the tariff is equivalent to an additional Dominion subsidy to the east. To equalized subsidy payments there must be an approximate equality of protection to start with: this can be effected either by moving toward free trade for eastern manufactures or toward protection for western (and eastern) agricultural prices. We suggest that the latter road is the one which should be travelled, and that control of marketing, fixing a minimum internal price for Canadian farmers

(just as the tariff and minimum wage laws stabilize the workers' income) would provide a firm and just basis for Dominion-provincial financial relations. New Zealand has shown a commendable initiative in this regard. The aim should be, not to transfer provincial marketing powers to the Dominion, but to place Dominion powers beyond doubt. Some marketing schemes, such as those providing for the distribution of milk and other commodities locally, are obviously appropriate for provincial control.

Taxation

9. In regard to taxation, we feel that this subject also should be viewed primarily in the light of certain principles. First, taxation is properly an instrument of economic policy. Like the tariff, it is a means of distributing advantages as between industry and industry, region and region, class and class.

Second, it effects a redistribution of wealth. Complaints about the total burden of taxation in Canada must not be taken too seriously. We have already pointed out that this has been the most profitable year the security holders of Canada have ever enjoyed, and a comparison of tax schedules in Canada, New Zealand, and Australia will show that, as far as income and inheritance taxes are concerned, moderately well-to-do and wealthy Canadians are treated comparatively leniently. We feel there should be a great change in the incidence of taxation. Taxation should be progressive rather than regressive; it should be on wealth rather

than on consumption. Canadian taxation at the moment is predominantly regressive. Not twenty per cent of its total amount in the Dominion-provincial field can be described as being levied on those best able to pay; in England about 45 per cent of the national revenue comes from income and inheritance taxes. Sir Edward Beatty has recently said, in relation to Canada's large tax bill:

> "It is altogether a mistake to suppose that the income tax or the inheritance tax, both of which are largely paid by the wealthier classes, form a large percentage of this huge total. The bulk comes out of business and is paid by the ultimate consumer of practically every commodity we buy, and no one escapes; the farmer in the west and the office clerk in Nova Scotia each makes his contribution as also does the man who works at a trade."[1]

This state of affairs should be remedied; there should be considerable increase in income and inheritance taxes, particularly in the middle and upper brackets, and reduction in customs, excise and sales taxes. For purposes of efficiency a single federal collecting agency might well be set up for both these taxes, with a redistribution to the provinces on an agreed basis. Provinces should be treated with equal consideration in the redistribution, for the large incomes made by a resident in one province are usually made through operations which extend throughout the country. The earnings of the Flin Flon mines or the Nova Scotia steel mills, for example, may go to swell the taxable income or the estate of a resident of Quebec or Ontario, which provinces have no special moral right to this taxation. By collecting taxes on the principle of ability to pay, and by spending them in social services spread over

[1] Montreal Gazette: Annual Survey for 1937.

the whole country according to need, something will be done to equalize economic benefits and burdens throughout Canada.

It is often argued that taxation reduces purchasing power. "As more and more taxes are imposed by governments, less and less is left for the people as a whole."[1] But the proceeds of taxes are paid out again in salaries, interest on government bonds, etc. It is of considerable importance that about 35 per cent of Dominion, and over half of provincial, revenue from taxation go to pay interest charges. In other words, regressive taxation combined with large public debts, is lowering the standard of living of the masses of Canadians by transferring a coniderable part of their incomes to the wealthy holders of government bonds.

In considering ways and means of implementing government revenues without increasing taxation we would urge the adoption by the Dominion, and the provinces, of the procedure of nationalizing profitable economic enterprises which lend themselves to government operation. Already in Canada the provinces depend on the proceeds of liquor distribution for a considerable portion of their revenues. Liquor production would be a continuous source of profit also as a state monopoly. Many provinces and municipalities operate hydro stations successfully; public ownership could be extended here. In Sweden, the state tobacco monopoly is highly profitable; revelations before the Price Spreads Committee a few

years ago showed that there are large profits to be made out of tobacco in Canada. Under a Dominion monopoly these could be used to finance government services. Formerly, in English constitutional history, the King was expected to "live on his own"; to-day we can re-introduce the idea if we promote state enterprise in profitable fields of economic activity.

Public Debt

10. For the purpose of reducing the present high cost of financing the public debt, and thus freeing future national income for more productive enterprises, there are three measures to which much more attention should be given than hitherto:
(1) an organised plan of debt reduction on the Australian model,
(2) a special profits tax for the purpose of reducing public debt, for which the time was never more appropriate than now,
(3) a Debt Redemption levy, after the manner of the suggestion put forward at the Liberal Summer School of 1935.[1] We would urge that this Commission give special attention to all of these. Australia has shown the beneficial effects of a general debt reduction on the operation of the economy. A special levy imposed by Dominion government on accumulated wealth over $250,000, for example, graduated in proportion to the size of private fortunes, and applied exclusively to the reduction of the national debt, would be a notable contribution by this generation of Canadians to the freedom and happiness of the next.

(1) See The Liberal Way. p.42. The figure $2,000,000 should read $2,000,000,000. See for further details, Social Planning for Canada. pp. 253-5.

Provincial Rights Take Their Proper Place

11. While we have urged the necessity for increased Dominion powers to restore the original equilibrium of the constitution and to enable present national needs to be efficiently met, we by no means envisage the reduction of the provinces to a municipal status. Their exclusive powers over local matters will remain; it will only be their present power to deal with matters of national concern which will be taken from them. It is likely that even this reasonable proposal will be objected to by some last-ditch defenders of provincial rights. These well-meaning persons must not be allowed to confuse the issue. Dominion and provinces are only two ways of arranging eleven million people for purposes of government. There is nothing sacrosanct about either. Groups of officials in provinces have a tendency to aggrandize their own powers and jurisdictions, and it is perhaps a pity that there can be nine official proponents of provincial rights in Canada but never more than one of Dominion rights. It is not safe to assume, either that "the province" means the government in power at a given moment in that province, or that "the province" is not just as truly spoken for by its representatives at Ottawa as by those in the provincial capital. This Commission, we feel sure, will be more concerned with meeting the basic needs of the masses of the people in the provinces, all of whom are Canadians first, than with flattering the self-importance of local politicians.

One of the assumptions behind the provincial rights cry is that in some mysterious way it is more democratic to give power to provincial governments than to the central government.

This may have been true in the early days when local communities were comparatively isolated and before the whole country had been economically bound together. Today when the economic problems are nation-wide in scope, anything which deprives the national government of effective power to deal with them is really undemocratic. The identification between local autonomy and democracy is largely out of date.

Another common fallacy is the identification of provincial rights and minority rights. These two kinds of rights are quite distinct today, though when practically all French Canadians were in the Province of Quebec they were more closely assimilated in fact. A provincial right is a right or power belonging to a province, irrespective of its predominant race or creed. A minority right is the right of some minorities in Canada to certain educational and linguistic guarantees written into the B. N. A. Act. Taking away provincial rights does not necessarily endanger minority rights; indeed, now that the French Canadian population is more widely spread in Canada it may well be contended that their minority rights will be better protected if provincial powers are curtailed.(1) Historically it has been true in Canada that minority rights have been more endangered by provincial action than by Dominion action.

We would furthermore point out that provincial rights by no means disappear whenever the Dominion assumes a function formerly provincial. The administration of a function can be

(1) The Abbe Groulx once pointed this out: see La Confederation Canadienne. p. 188.

decentralized even where the ultimate control of policy is centralized. It is further possible, and we would urge that this be given most serious consideration, to make some of the new Dominion powers concurrent rather than exclusive, so that provincial laws would be valid until they conflicted with a Dominion law on the same point. Laws relating to hours, wages, pensions and health might well be based on a concurrent power: the Dominion would establish a basic minimum, but the provinces could revise it upwards, or experiment in new fields, as much as they wished.

Conclusion and Recommendations

11. In conclusion, we would summarise our findings and recommendations in brief form, adding some further points not specifically dealt with in this memorandum but following logically from the approach which has been adopted.

The main purposes of Confederation in 1867 were 1) The creation of a single Federal State; 2) The preservation of democracy; 3) The protection of minorities; 4) The building of a strong central government; 5) The unification of law in the common-law provinces. Two other purposes now demand more definite constitutional recognition, namely 6) the provision of social services and a basic minimum standard of living; 7) the control and direction of the economy through long-range economic planning. To maintain and carry out these purposes, the Dominion Parliament must be restored to its former position of authority over all matters of national importance affecting

the welfare of Canadians in all the provinces. In addition, steps must be taken to overcome the present maldistribution of wealth and to check the growing evils of monopoly. Therefore we recommend that :

1. The treaty making and enforcing power should be placed exclusively in Dominion hands, including the power to enforce all kinds of international conventions. Canada should be a single nation in international affairs.
2. A National Welfare Code should be adopted by the Dominion, after the necessary amendments to the B.N.A. Act, but leaving the provinces concurrent powers in powers in appropriate cases. This should cover all the most important subjects of social legislation. The most pressing are unemployment relief, employment exchanges, unemployment insurance, crop insurance, health insurance, old age and other pensions, minimum wages and maximum hours, weekly day of rest, child labour, holidays with pay, industrial disputes, and the right of association.
3. The Dominion power to regulate trade and commerce should be enlarged again to include a power to make general regulations for the whole of Canada, including control of agricultural marketing.
4. Taxation should be used as an instrument of economic and social policy. Its distribution is far more important than its aggregate amount. It should him

to redistribute wealth and to share national burdens and benefits fairly. It should be placed far more heavily on accumulated wealth and far less on wage earners and farmers. To supplement government revenues, additional profitable forms of economic activity should be socialized. The Dominion should collect all income and inheritance taxes and distribute a portion to the provinces on a basis of equality. On no account should taxation be reduced through the curtailment of social services.

5. The national debt should be progressively reduced, by methods such as an excess profits tax devoted to this purpose, a direct general reduction after the Australian model, or the imposing of a Debt Redemption Levy.

6. To clear up a doubtful point of constitutional law, the B.N.A. Act should be amended so as to make it clear that when the Dominion and all the provinces have co-operated to enact a particular legislative scheme, that legislation shall be valid.

Finally, we would like to repeat a remark of the Hon. T. D'Arcy McGee, made during the Debates on Confederation, which we believe is true of Canada today : He said :[1]

> "The principle (of federalism) itself seems to me to be capable of being so adapted as to promote internal peace and external security, and to call into action a genuine, enduring and heroic patriotism.

[1]Debates on Confederation, p. 144.

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League for Social Reconstruction

Brief submitted to the Royal Commission on Dominion-Provincial Relations

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